

2876.4112 MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS; NET CAPITAL REQUIREMENTS FOR BROKER-DEALERS.

Subpart 1. **Custody.** An investment adviser registered or required to be registered under the Minnesota Securities Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

A. An investment adviser having custody solely due to direct fee deduction and complying with the terms described under part 2876.4116, subpart 1, item F, and the related books and records requirements, as described in part 2876.4114, shall not be required to comply with the net worth or bonding requirements of this part.

B. An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under part 2876.4116, subpart 1, item F, or subpart 2, item C, and the related books and records requirements, as described in part 2876.4114, shall not be required to comply with the net worth or bonding requirements of this part.

Subp. 2. **Discretionary authority.** An investment adviser registered or required to be registered under the Minnesota Securities Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.

Subp. 3. **Prepayments.** An investment adviser registered or required to be registered under the Minnesota Securities Act who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

Subp. 4. **Notice of deficiency.** Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under the Minnesota Securities Act shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of its financial condition, including the following:

- A. a trial balance of all ledger accounts;
- B. a statement of all client funds or securities which are not segregated;
- C. a computation of the aggregate amount of client ledger debit balances; and
- D. a statement as to the number of client accounts.

Subp. 5. **Net worth defined.** For purposes of subparts 1 to 9, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges,

goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

Subp. 6. **Custody defined.** For purposes of this part, "custody" is defined in part 2876.4116, subpart 3, item A.

Subp. 7. **Exercising discretion.** For purposes of this part, an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third-party trading agreement if:

A. the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third-party trading agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

B. the investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser in fact does not exercise discretion with respect to the account; and

C. a third-party trading agreement is executed between the client and a broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

Subp. 8. **Appraisals.** The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

Subp. 9. **Out-of-state investment advisers.** Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered in such state and is in compliance with such state's minimum capital requirements.

Subp. 10. **Net capital requirement.** Every broker-dealer registered or required to register under the Minnesota Securities Act shall at all times have and maintain net capital in compliance with Code of Federal Regulations, title 17, section 240.15c 3-1.

Statutory Authority: *MS s 45.023; 80A.82*

History: *34 SR 593*

Published Electronically: *November 23, 2009*